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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,225	10/04/2001	Gerald Dorros	AMS-011A	4566

7590

09/16/2003

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EXAMINER
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RODRIGUEZ, CRIS LOIREN

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 09/16/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/972,225

Applicant(s)

DORROS ET AL.

Examiner

Cris L. Rodriguez

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 7/3/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 10-30 is/are pending in the application.
- 4a) Of the above claim(s) 6, 10-25 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9 and 26-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Please note that claim 30 has been withdrawn from consideration by the Examiner as being drawn to a non-elected invention/species.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the inflatable balloon having a distal taper must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 5, 7-9, 26, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbut et al (US 6,555,057) in view of Barbut (US 6,146,370).

Barbut ('057) discloses, (fig. 6D) a system for cerebral blood manipulation including a catheter 12 having a lumen and an occlusive element at the distal end occluding the antegrade flow in a carotid artery, and a flow control device (100 or 104)

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with a flow control element at the distal end configured for insertion separately from the catheter via subclavian artery and brachiocephalic trunk so that the flow control device inhibits flow to vertebral and common carotid arteries. However, Barbut ('057) fails to disclose the catheter being inserted via the descending aorta.

Barbut ('370) teaches a catheter 1, for cerebral blood manipulation, having a lumen and an occlusive element at the distal end occluding the antegrade flow in a carotid artery that can be introduced through the femoral artery and the descending aorta. Therefore given the teachings, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Barbut's('057) catheter 12 with Barbut's('370) catheter 1 in order to insert Barbut's('370) catheter through the descending aorta to manipulate the cerebral blood flow.

5. Claims 3, 4 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbut('057) in view of Barbut('370), and further in view of Zadno-Azizi et al (US 6,022,336).

Barbut/Barbut discloses the invention substantially as claimed. However, Barbut/Barbut fails to disclose the inflatable having a distal or proximal taper.

Zadno-Azizi teaches a catheter/guidewire having an occlusion balloon (figs. 16-17) with a proximal or distal taper for use in the carotid arteries. Given the teachings, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Zadno-Azizi's balloon into Barbut/Barbut's catheters as such would merely constitute substitution of functionally equivalent occluding elements.

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***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barbut, and Barbut et al.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cris L. Rodriguez whose telephone number is (703) 308-2194. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

September 10, 2003

  
Cris L. Rodriguez  
Examiner

  
MANUEL MENDEZ  
PRIMARY EXAMINER